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Sunset Review  
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February 22, 2006

MEMORANDUM TO: David M. Spooner  
Assistant Secretary  
for Import Administration

FROM: Stephen J. Claeys  
Deputy Assistant Secretary  
for Import Administration

SUBJECT: Issues and Decision Memorandum for Final Results of Full Sunset  
Review of the Countervailing Duty Order on Brass Sheet and Strip  
from France

#### Summary

We have analyzed the case and rebuttal briefs of interested parties in this full sunset review of the countervailing duty (“CVD”) order on brass sheet and strip from France and have further examined the Department’s regulations and practice with regard to the facts in this case. We recommend that you approve the positions we have developed in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this full sunset review for which we received case and rebuttal briefs from parties.

1. Likelihood of continuation or recurrence of a countervailable subsidy
2. Net countervailable subsidy likely to prevail

#### History of the Order

On March 6, 1987, the Department of Commerce (“the Department”) published in the Federal Register the CVD order on brass sheet and strip from France. See Countervailing Duty Order; Brass Sheet and Strip from France, 52 FR 6996 (March 6, 1987). The Department found two programs countervailable: Government Equity Infusions and Other Financial Assistance to Trefimetaux (“TMX”), and Certain Financing from Credit National. The net countervailable subsidy determined was 7.24 percent ad valorem.

Since the investigation, the Department has completed one sunset review of the CVD order. See Final Results of Expedited Sunset Review: Brass Sheet and Strip from France, 64 FR

48369 (September 3, 1999) (First Sunset Review). No administrative reviews of the order have been conducted.

On September 3, 1999, the Department published in the Federal Register a notice of final results of the first five-year sunset review of the CVD order on brass sheet and strip from France, pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”). See First Sunset Review, 64 FR 48369. As a result of that review, the Department determined that revocation of the CVD order would be likely to lead to continuation or recurrence of a net countervailable subsidy of 7.24 percent ad valorem. In accordance with 19 CFR 351.218(e)(4), the Department published a notice of continuation of the order based on affirmative findings by both the Department and the International Trade Commission (“ITC”). See Continuation of Antidumping Duty Orders and Countervailing Duty Orders: Brass Sheet and Strip From Brazil, Canada, France, Italy, Germany, and Japan, 65 FR 25304 (May 1, 2000).

### Background

On April 1, 2005, the Department initiated a sunset review of the CVD order on brass sheet and strip from France pursuant to section 751(c) of the Act. See Notice of Initiation of Five-Year (“Sunset”) Reviews, 70 FR 16800 (April 1, 2005).

On October 25, 2005, the Department published the preliminary results of the full sunset review of the instant order. See Preliminary Results of Full Sunset Review: Brass Sheet and Strip from France, 70 FR 61604. In our preliminary results we found that revocation of the order would likely lead to continuation or recurrence of countervailable subsidies on the subject merchandise in France and that 0.19 percent ad valorem was the level of subsidization likely to prevail if the order were revoked.

Interested parties were invited to comment on our preliminary results. On December 7, 2005, we received case briefs from the Government of France (“GOF”) and the European Union (“EU”). On December 12, 2005, we received rebuttal briefs from domestic interested parties.<sup>1</sup>

### Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and any subsequent reviews, and whether any changes in the program which gave

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<sup>1</sup> Heyco Metals, Inc. (“Heyco”); Olin Corporation – Brass Group (“Olin”); Outokumpu American Brass (“Outokumpu”); PMX Industries, Inc. (“PMX”); Revere Copper Products, Inc. (“Revere”); Scott Brass (“Scott”); the International Association of Machinists and Aerospace Workers; United Auto Workers (Local 2367 and Local 1024); and United Steelworkers of America (AFL/CIO-CLC) (hereinafter, collectively “domestic interested parties”).

rise to the net countervailable subsidy have occurred that are likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the ITC the net countervailable subsidy likely to prevail if the order were revoked. In addition, consistent with section 752(a)(6) of the Act, the Department shall provide to the ITC information concerning the nature of the subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and countervailing Measures (“SCM”).

Below we address the case and rebuttal briefs from interested parties, as well as our findings pursuant to further analysis since the preliminary results.

### *1. Likelihood of Continuation or Recurrence of Countervailable Subsidy*

#### Interested Parties’ Comments

In their case briefs, the GOF and the EU disagree with the Department’s preliminary determination that revocation of the CVD order would likely result in the continuation of countervailable subsidization of brass sheet and strip in France. The GOF and EU argue that the Department’s preliminary finding does not take into account the evidence provided by the GOF in the course of this sunset review. Moreover, they argue, the Department’s preliminary determination also disregards the fact that information placed on the record at the time of the original investigation effectively enabled the Department to conclude that all of the special loans from Credit National were repaid at their maturity, *i.e.*, before the initiation of the instant review. Moreover, argue the GOF and EU, information on the record of the instant review confirms that the subsidized loan in question was repaid by TMX in September 1997 and that Credit National has granted no other subsidized loans since 1987.

The GOF and EU also point out that Credit National is no longer owned by the French government, having been transferred to the private French bank Netexis. Respondents provide additional information to support their claim that Credit National has been sold. Therefore, argue the GOF and EU, there is no basis for the Department to conclude that any special loans from Credit National still exist.

In their rebuttal comments, domestic interested parties argue that the Department should affirm its preliminary determination and find that there is likelihood of continuation or recurrence of countervailable subsidization were the order revoked. Domestic interested parties maintain that there is insufficient evidence to support respondents’ statement that certain financing from Credit National no longer provides a countervailable subsidy to producers of the subject merchandise in France.

Domestic interested parties also argue that the Department should reject the new factual information submitted by respondents in their case briefs, as it is untimely.

Domestic interested parties assert that the Department cannot underestimate the importance of respondents' failure to request any administrative reviews of this order. They also argue that by waiting until the second sunset review to make their claims, respondents have precluded the Department from conducting a full, factual examination of the accuracy and reliability of their claims, as explicitly contemplated by the Department's Sunset Policy Bulletin.<sup>2</sup>

#### Department's Position

In the preliminary results, the Department agreed with domestic interested parties that revocation of the order would likely lead to continuation or recurrence of countervailable subsidies on the subject merchandise in France. As explained below, in light of the comments received and upon further examination of the Department's regulations and practice with regard to the facts in this case, we have reached a contrary finding.

In accordance with section 752(b)(1) of the Act, in determining whether revocation of a CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy, the Department will consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the program which gave rise to the net countervailable subsidy determined in the investigation and subsequent reviews has occurred that is likely to affect that net countervailable subsidy.

In the instant case, there have not been any administrative reviews of the order. However, based on the information from the original investigation, we determined in our preliminary results that the benefits from the non-recurring government equity infusions and other financial assistance to TMX were fully allocated prior to the initiation of this sunset review and no longer provide a countervailable subsidy. Domestic interested parties did not contest this determination. With respect to the special loans from Credit National, the rate calculated for this program at the investigation was 0.19 percent ad valorem, which is de minimis. Domestic interested parties argue that there is no evidence on the record to indicate that this program does not continue to exist. We note, however, that the rate from this program has never been above de minimis.

Section 752(b)(4)(A) of the Act states that "[a] net countervailable subsidy. . . that is zero or de minimis shall not by itself require the administering authority to determine that revocation of a countervailing duty order. . . would not be likely to lead to continuation or recurrence of a countervailable subsidy." "However, if the combined benefits of all programs considered by Commerce for purposes of its likelihood determination have never been above de minimis at any time the order was in effect, and if there is no likelihood that the combined benefits of such programs would be above de minimis in the event of revocation or termination, Commerce should determine that there is no likelihood of continuation or recurrence of countervailable

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<sup>2</sup> Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871, 18874 (April 16, 1998) (Sunset Policy Bulletin).

subsidies.” See the Statement of Administrative Action (“SAA”) at 889.<sup>3</sup> This provision is reiterated in the Department’s Sunset Policy Bulletin, under subsection III.A.6.b. (63 FR 18871, 18875).

Based on the record information in this case, we have previously determined that the benefits from the non-recurring government equity infusions and other financial assistance to TMX were fully allocated prior to the initiation of this sunset review. Moreover, we determine that the statements made by respondents and evidence on the record regarding the nature of these fully allocated subsidies – equity infusions and special grants -- support a finding that revocation of this order would not be likely to lead to continuation or recurrence of a countervailable subsidy under these programs.<sup>4</sup> Consequently, we find that these past subsidies no longer serve as a basis for determining the likelihood of continuation or recurrence of subsidization. As such, the special loans from Credit National are the only remaining subsidies that may provide a basis for our likelihood determination. As we have noted above, the combined benefits from those loans have never been above de minimis. We determine that there is no evidence on the record to indicate that the subsidy rate would be above de minimis in the event of revocation or termination. Thus, in accordance with the guidance provided by the SAA, we find that there would be no likelihood of continuation or recurrence of a countervailable subsidy were the order to be revoked.

Although domestic interested parties assert that the GOF and EU submitted new information in their case briefs, since we have not considered this information, we do not find it necessary to reject the information.

## *2. Net Countervailable Subsidy Likely to Prevail*

### Interested Parties’ Comments

The GOF and EU argue in their case briefs that the rate of subsidization likely to continue or recur were the order revoked is zero.

In their rebuttal brief, domestic interested parties argue that in determining the subsidy rate likely to prevail if the order were revoked, the Department normally will select the rate from the original investigation, since that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of the order in place. Further, domestic interested parties assert that, for the purposes of this sunset review, the Department should

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<sup>3</sup> The SAA also states that “the existence of a zero or de minimis countervailable subsidy at any time while the order was in effect shall not in itself require Commerce to determine that continuation or recurrence of countervailable subsidies is not likely.” SAA, H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. at 889 (1994).

<sup>4</sup> See Final Affirmative Countervailing Duty Determination: Brass Sheet and Strip from France, 52 FR 1218 (January 12, 1987).

uphold its preliminary results and rely on the rate determined in the original investigation because the Department has not conducted an administrative review of this order.

#### Department's Position

The Department normally will provide to the ITC the net countervailable subsidy that was determined in the original investigation because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place. However, this rate may not always be the most appropriate rate.

In the instant case, the benefits from the government equity infusions and other financial assistance to TMX program were fully allocated prior to the initiation of this sunset review. The allocation period for these non-recurring subsidies, which was determined in the investigation, is 14 years. Using that period, the last year to which any benefits were allocated was 1999. In addition, we determine that the statements made by respondents and evidence on the record indicate that no additional disbursements have been made since the investigation under these programs.

Moreover, we determined in the original investigation that the GOF provided a benefit to producers of subject merchandise in France through certain financing from Credit National. The rate for this program was found to be 0.19 percent ad valorem in the original investigation, which is de minimis. Therefore, we determine that the rate likely to prevail were the order revoked is de minimis.

#### Final Results of Review

As a result of this sunset review, the Department finds that revocation of the CVD order would not be likely to lead to continuation or recurrence of a countervailable subsidy for the reasons set forth in these final results of review. Further, we find the net countervailable subsidy likely to prevail if the order were revoked is de minimis.

Because we have determined that revocation is not likely to result in the continuation or recurrence of a countervailable subsidy, we are not providing a rate to the ITC.

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of review in the Federal Register.

AGREE: \_\_\_\_\_

DISAGREE: \_\_\_\_\_

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David M. Spooner  
Assistant Secretary  
for Import Administration

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(Date)